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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

YELLOWCAKE, INC., California
corporation,

Plaintiff,

v.

HYPHY MUSIC, INC.,

Defendant.

CASE NO.:

1:20-CV-00988-DAD-BAM

**DECLARATION JOSE MARTINEZ
IN SUPPORT OF REPLY TO
COUNTER-DEFENDANTS'
CHALLENGE TO THE VALIDITY
OF CERTAIN COPYRIGHT
REGISTRATIONS**

DECLARATION OF JOSE MARTINEZ

1 HYPHY MUSIC, INC.,

2 Counterclaimant,

3
4 v.

5 YELLOWCAKE, INC.; COLONIZE
6 MEDIA, INC; JOSE DAVID
7 HERNANDEZ; and JESUS CHAVEZ
8 SR,

9 Counterdefendants.

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DECLARATION OF JOSE MARTINEZ

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I, Jose Martinez, declare and state as follows:

1. I am an individual currently residing in the County of Los Angeles, State of California, and am over 18 years of age. I am an employee for Defendant/Counterclaimant HYPHY MUSIC, INC., a California corporation (“Hyphy”). I know all of the following facts of my own personal knowledge and, if called up and sworn as a witness, could and would competently testify thereto.

2. As evidenced in Hyphy’s Amended Counterclaim, in or about February 2013, Hyphy entered into an oral recording agreement whereby it commissioned Jesus Chavez to provide services as a recording artist on the Works. Under this agreement, Hyphy agreed to provide certain services, commission others to provide other services, and to pay Chavez a fixed amount, in exchange for Chavez’s agreement to follow Hyphy’s artistic direction, perform and record the sound and audiovisual recordings embodying the musical compositions, and grant Hyphy the non-exclusive right to utilize Chavez’s name and likeness in connection with the exploitation of the Works in perpetuity.

3. In commissioning others to provide certain services to Chavez, at least two such individuals, Javier Elizondo and Marcelino Mendoza, signed employment agreements with Hyphy that included standard work-for-hire language conveying all rights in and to each employee’s creative contributions to Hyphy. I have searched for these employment agreements and believe I will be able to find them in due course, but the employee who has access to these agreements is out of the Country right now, which is making it difficult to locate such agreements.

4. Based on Hyphy’s February 2013 agreement with Chavez, Hyphy’s written employment agreement with Mr. Elizondo and Mr. Mendoza who Hyphy commissioned to provide services, and the actual control Hyphy itself exerted over the arrangement as the one paying Chavez to render services in the creation of the

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1 Works at its request, Hyphy genuinely believed that it had acquired ownership of the
2 Works as works-made-for-hire.

3 5. Accordingly, on or about May 5, 2018, I prepared and submitted
4 applications with the United States Copyright Office (“USCO”) to register
5 Copyrights in the sound recordings entitled (a) *Los Originales de San Juan- El*
6 *Campesino*, bearing Registration No. SR 0000810777, (b) *Los Originales de San*
7 *Juan- Corridos de Poca M...*, bearing Registration No. SR 0000869114, (c) *Los*
8 *Originales de San Juan- En Vivo Desde La Cantina de Mi Barrio*, bearing
9 Registration No. SR 0000820139; (d) *Los Originales de San Juan- Nuestra Historia*
10 *En Vivo*, bearing Registration No. SR 0000876925; and (e) various other audiovisual
11 works and cover art for such albums (collectively, the “Works”).

12 6. Javier Elizondo, in his role as an employee commissioned by Hyphy to
13 perform services pursuant to a written employment agreement, contributed musical
14 direction, editing, and musical arrangement services, and performed base guitar,
15 added vocals and co-produced the albums *Los Originales de San Juan- En Vivo*
16 *Desde La Cantina de Mi Barrio*, bearing Registration No. SR 0000820139 and *Los*
17 *Originales de San Juan- Nuestra Historia En Vivo*, bearing Registration No. SR
18 0000876925. Additionally, Marcelino Mendoza, in his role as an employee
19 commissioned by Hyphy to perform services pursuant to a written employment
20 agreement, contributed musical direction and arrangement services, as well as
21 filmed, edited and produced all related audiovisual works for the albums *Los*
22 *Originales de San Juan- En Vivo Desde La Cantina de Mi Barrio*, bearing
23 Registration No. SR 0000820139 and *Los Originales de San Juan- Nuestra Historia*
24 *En Vivo*, bearing Registration No. SR 0000876925.

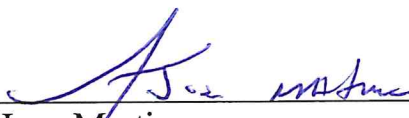
25 7. At the time that I submitted the applications for the Works, I simply
26 submitted applications that contained information derived from my knowledge of
27 the arrangement between Hyphy and Chavez as alleged in the Amended
28 Counterclaim.

DECLARATION OF JOSE MARTINEZ

1 8. Therefore, and although Hyphy believes that the applications for *Los*
2 *Originales de San Juan -En Vivo Desde la Cantina de Mi Barrio*, bearing
3 Registration No. SR. 0000820139, and *Los Originales de San Juan -Nuestra*
4 *Historia En Vivo*, bearing Registration No. SR 0000876925, are already valid
5 because Hyphy possessed at least two employment agreements containing work-
6 made-for-hire language that assigned all of the employee's creative contributions to
7 to Hyphy, neither I nor anyone else at Hyphy consulted with Hyphy's attorneys
8 regarding all of the applications before I submitted them. Therefore, neither I, nor
9 anyone else at Hyphy, was aware that Hyphy could not be an owner of certain of the
10 Works under either an assignment of rights or work-made-for-hire theory if Hyphy's
11 agreement with Chavez was not in writing.

12 9. Further, neither I, nor anyone else at Hyphy, were aware that Hyphy
13 possesses an ownership interest in all of the Works under a joint authorship theory,
14 due to its artistic contributions thereto, or that the applications have inadvertently
15 and mistakenly failed to indicate Hyphy's ownership on such grounds. If I or anyone
16 else for Hyphy had known this, I likely would have filed the applications to indicate
17 that Hyphy was an owner of the Works via another legal theory, which would then
18 make such applications consistent with the truthful allegations contained in Hyphy's
19 Amended Counterclaim.

20 I declare under penalty of perjury under the laws of the State of California that
21 the foregoing is true and correct and that this Declaration was executed on August
22 3, 2021, at Fresno, California.

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25 Jose Martinez
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DECLARATION OF JOSE MARTINEZ

1 I HEREBY CERTIFY that on August 3, 2021, I electronically filed the
2 foregoing with the document with the Clerk of the Court using the CM/ECF filing
3 system. I also certify that the foregoing document is being served this date on all
4 counsel of record or pro se parties as follows:

5 THOMAS P. GRIFFIN, JR. Esq.
6 HEFNER, STARK & MAROIS, LLP
7 2150 RIVER PLAZA DRIVE, SUITE 450
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9 SETH L. BERMAN, sq.
10 ABRAMS, FENSTERMAN, FERNSTERMAN,
11 EISMAN, FORMATO, FERRARA, WOLF &
12 CARONE, LLP

13 In the manner specified, either via transmission of Notices of Electronic Filing
14 generated by the CM/ECF system or in some other authorized manner for those
15 counsel or parties who are not authorized to receive electronically Notices of
16 Electronic Filing.

17 /s/ John Begakis

18 John M. Begakis

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